UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA, Complainant, v. MORGAN'S MEXICAN & LEBANESE FOODS, INC., Respondent.	))))))))	8 U.S.C. § 1324a Proceeding Case No. 98A00063 MARVIN H. MORSE Administrative Law Judge

FINAL DECISION AND ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION
(September 11, 1998)

Appearances: Annette M. Toews, Esquire,
Immigration and Naturalization Service

Roger Morgan, *pro se*
Morgan's Mexican & Lebanese Foods, Inc.

I. PROCEDURAL HISTORY

On March 30, 1998, the Immigration and Naturalization Service (INS) filed a Complaint in the Office of the Chief Administrative Hearing Officer (OCAHO) against Morgan's Mexican & Lebanese Foods, Inc. (Respondent or Morgan's). Attached to the Complaint as Exhibit A is the Notice of Intent to Fine (NIF), which was served on Respondent on November 21, 1997. An amended NIF issued on December 16, 1997. Complaint, Exhibit C. Patricia G. Mattos (Mattos), Esq., as counsel for Morgan's, made a timely request for hearing on December 9, 1997. Complaint, Exhibit B.

Count I of the Complaint charges that Respondent knowingly hired or continued to employ Santa Garcia Hernandez in violation of 8 U.S.C. § 1324a(a)(1)(A), or in the alternative 8 U.S.C. § 1324a(a)(2), and assesses a civil money penalty of $725.[1]

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[1] The amended NIF issued 12/16/97 seeks a civil penalty for Count I in the amount of $725; however, the Complaint cites the penalty amount for Count I at $750. Because the Complainant seeks a total civil penalty amount of $2,635 (the sum of all counts using the $725 Count I figure) and not $2,660 (the sum of all counts using the $750 figure), it is understood that

(continued...)

Count II of the Complaint charges that Respondent failed to prepare the employment eligibility verification form (Form I-9) for Santa Garcia Hernandez in violation of 8 U.S.C. § 1324a(a)(1)(B) and assesses a civil money penalty of $510.

Count III of the Complaint charges that Respondent failed properly to complete section 2 of the Forms I-9 for employees Carolyn Lillo, Julia Barnholdt, and Raquel Cordero in violation of 8 U.S.C. § 1324a(a)(1)(B) and assesses a civil money penalty of $1,050 ($350 per individual).

Count IV of the Complaint charges that Respondent failed to ensure that Roger Morgan properly completed section 1 of the Form I-9 and that Respondent failed to properly complete section 2 of the Form I-9 for Roger Morgan in violation of 8 U.S.C. § 1324a(a)(1)(B) and assesses a civil money penalty of $350.

INS requests a total civil money penalty of $2,635 and a cease and desist order.

On March 31, 1998, OCAHO issued a Notice of Hearing transmitting a copy of the Complaint to Respondent and another copy to Mattos.

On April 30, 1998, Mattos filed a Motion to Withdraw Appearance, "due to a breakdown in the attorney/client relationship." Mattos certified that a copy was sent on April 20, 1998, to Roger Morgan, Morgan's Mexican & Lebanese Foods, Inc., 736 S. Robert Street, St. Paul, Minnesota 55107-3225. On May 13, 1998, INS filed its response, stating it does not oppose the motion.

On May 14, 1998, Complainant filed a Motion For Entry of Default Judgment based on Respondent's failure to plead or otherwise defend in accordance with 28 C.F.R. §§ 68.9(a) and (b). Attached to the Motion was a Declaration of Annette E. Toews, Esq., and a Brief in Support of Complainant's Motion for Entry of Default Judgment.

On June 1, 1998, I issued an Order which granted counsel's motion to withdraw and ordered Respondent to show cause why default judgment should not issue, which afforded Respondent until June 29, 1998, to answer the Complaint. A copy of the Order, served by certified mail and addressed to Roger Morgan, was received at Morgan's on June 4, 1998.

In response, Respondent filed a letter pleading on July 1, 1998, stating that "[d]ue to financial circumstances, I am obliged to answer the complaint without the use of legal counsel." I accept this letter pleading as Respondent's Answer. Accordingly, Complainant's Motion for Entry of Default Judgment is denied.

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[1](...continued)
the $725 penalty amount (noted in the 12/16/97 NIF) is correct.

On August 12, 1998, Complainant filed a Motion for Entry of Default Judgment and, Alternatively, Summary Judgment (Motion), a Brief in support of its motion (Brief), and several attachments to the Brief. Because, as noted above, Respondent's letter pleading filed July 1, 1998, constitutes an Answer to the Complaint, so much of Complainant's Motion as seeks default is denied.

To date, Respondent has not filed a response to the Motion. A timely response is past due. *See* 28 C.F.R. § 68.38(a) (response must be filed within 10 days after service of motion); 28 C.F.R. § 68.8(c)(2) (adding 5 days to prescribed 10 day period for service by ordinary mail).

II. DISCUSSION

A. Summary Decision

The pertinent Rules of Practice and Procedure, 28 C.F.R. pt. 68.38, which govern this proceeding authorize the Administrative Law Judge (ALJ) at 28 C.F.R. § 68.38(c) to dispose of cases, as appropriate, upon motions for summary decision:

> The [ALJ] may enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

A fact is material if it might affect the outcome of the case. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986).

Upon motion for summary decision, the moving party has the initial burden of identifying those portions of the complaint "that it believes demonstrates the absence of genuine issues of material fact." *United States v. Davis Nursery, Inc.*, 4 OCAHO 694, at 932 (1994), *available in* 1994 WL 721954, at *6 (O.C.A.H.O.) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1985)).[2] "The moving party satisfies its burden by showing that there is an absence of evidence" to support the non-moving party's case. *Id.* The burden of production then shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. It may make its showing by means of affidavits, or by depositions, answers to interrogatories, or admissions on file. *Celotex*, 477 U.S. at 324.

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[2] Citations to OCAHO precedent in Volumes I-VI, ADMINISTRATIVE DECISIONS UNDER EMPLOYER SANCTIONS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES LAWS, reflect consecutive decision and order reprints within those bound volumes; pinpoint citations to pages within those issuances are to specific pages, *seriatim*. Pinpoint citations to OCAHO precedents in volumes subsequent to Volume VI, however, are to pages within the original issuances.

Title 28 C.F.R. § 68.38(c) is similar to and based upon Federal Rule of Civil Procedure 56(c), which provides for summary judgment in federal court cases. Under Rule 56(c), the court may consider any admissions on file as part of the basis for summary judgment. *United States v. Tri Component Product Corp.*, 5 OCAHO 821, at 768 (1995), *available in* 1995 WL 813122, at *3 (O.C.A.H.O.) (referencing FED. R. CIV. P. 56(c)). "Similarly, summary decision issued pursuant to 28 C.F.R. Section 68.38 may be based on matters deemed admitted." *Id.* (citing *United States v. Primera Enters., Inc.*, 4 OCAHO 615, at 261 (1994), *available in* 1994 WL 269753, at *2 (O.C.A.H.O.); *United States v. Goldenfield Corp.*, 2 OCAHO 321, at 165 (1991), *available in* 1991 WL 531744, at *3 (O.C.A.H.O.)).

This case is appropriate for summary decision because there are no genuine issues of material fact, as Respondent admits the Counts alleged in the Complaint as discussed below.

B. Liability Established

In Respondent's Answer, Roger Morgan, as General Manager and President of Morgan's, admits liability for the Counts alleged in the Complaint:

> I as store manager for Morgans have not been in compliance with the Immigration and Naturalization Service's (INS) laws governing employment. Therefore, Morgans must plead no contest to all four counts filed against Morgans. . . . Although my ignorance of employment law . . . is no excuse for non compliance to the law , [sic] I beg the courts leniency on the complaints filed against Morgans.

Attached to Complainant's Motion and Brief filed August 12, 1998, is INS Form I-314, signed by Roger Morgan for Respondent on March 30, 1997. The Form I-314 recites:

> Please be advised that Santa Garcia Hernandez (Claudia Martinez) . . . has been employed by this firm in the position of Deli at a rate of $6.00 per hour from Mar[ch] 1997 to currant [sic]. . . . I, Roger W. Morgan, further acknowledge that the above mentioned employee was knowingly hired/continued to employ despite my knowledge of his/her being unauthorized to accept employment with in the United States.

Because the Respondent admits liability on all Counts, I conclude that no genuine issues of material fact remain as to Respondent's liability for the violations. Accordingly, Complainant's Motion for Summary Judgment is granted as to liability.

I do not concur, however, with the quantum of civil money penalties assessed. Addressing penalties, I note that in certain OCAHO cases where the ALJ grants a dispositive motion in favor of liability, the ALJ severs the issue of civil money penalties for separate inquiry. That separate inquiry is necessary when a non-moving party lacks adequate notice that a pending

motion addresses both liability and civil money penalties.[3] Respondent, however, had adequate notice from the plain text of the Motion that it addresses both liability and civil penalties. Accordingly, there is no reason to bifurcate this proceeding and to delay judgment on penalty while adjudicating liability. Even though there is no dispute of material fact, the parties are not in agreement as to the quantum of penalty to be awarded on the basis of the obviously sparse record.

III. CIVIL MONEY PENALTIES ADJUDGED

A. Count I: Substantive Violation

As noted above, Respondent admits hiring Santa Garcia Hernandez, knowing that she was not authorized for employment in the United States in violation of 8 U.S.C. § 1324a(a)(1)(A), and continued to employ her knowing that she was unauthorized with respect to employment in violation of 8 U.S.C. § 1324a(a)(2). INS assessed a fine of $725 for this violation.

The statutory minimum civil money penalty in a case involving a first-time violation of employing an alien knowing that the alien is unauthorized to work is "not less than $250 and not more than $2,000 for each unauthorized alien." 8 U.S.C. § 1324a(e)(4)(A)(i); 8 C.F.R. § 274a.10(b)(1)(ii)(A). In determining the reasonableness of a civil penalty assessment, I generally consider the range of options between the statutory minimum and the amount assessed by the INS, unless unusual circumstances are present.[4] "It is important to note that I am not bound in my determination of the civil penalty amounts by Complainant's request in its Complaint." *United States v. Saeed Rahimzadeh Corp.*, 3 OCAHO 551, at 1499 (1993), *available in* 1993 WL 469349, at *3 (O.C.A.H.O.) (citations omitted).

Complainant argues on Brief that its "proposed penalty is reasonable and uncontested." Brief at 8. Respondent's Answer, however, states that "[a]ny additional financial burden for

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[3] *Martinez v. I.N.S.*, 959 F.2d 968 (5th Cir. 1992) (unpublished) (*vacating and remanding in part United States v. Martinez*, 2 OCAHO 360 (1991), *available in* 1991 WL 531871 (O.C.A.H.O.)); *United States v. Vickers*, 5 OCAHO 819, at 753-54 (1995), *available in* 1995 WL 813123, at *3 (O.C.A.H.O.); *United States v. Raygoza*, 5 OCAHO 729, at 50 (1995), *available in* 1995 WL 265080, at *2 (O.C.A.H.O.).

[4] *See United States v. Raygoza*, 5 OCAHO 729, at 50 (1995), *available in* 1995 WL 265080, at *2 (O.C.A.H.O.); *United States v. Tom & Yu, Inc.*, 3 OCAHO 445, at 522 (1992), *available in* 1992 WL 535582, *1; *United States v. Widow Brown's Inn*, 3 OCAHO 399, at 44 (1992), *available in* 1992 WL 535540, at *29 (O.C.A.H.O.); *United States v. DuBois Farms*, 2 OCAHO 376, at 633 (1991), *available in* 1991 WL 531888, at *24 (O.C.A.H.O.); *United States v. Cafe Camino Real, Inc.*, 2 OCAHO 307, at 45 (1991), *available in* 1991 WL 531736, at *11 (O.C.A.H.O.).

Morgans at the present time would certainly place it's [sic] operation in jeopardy." In addition to "beg[ging for] the courts leniency[,]" the Answer also references that "Morgans has been operating under a very small margin of profit" and that Morgan's "financial circumstances [does] not allow for adequate staffing." The Answer concludes, "Due to the financial predicament in which Morgans finds itself at the present time, I would ask that *if a fine is to be levied* against Morgans that Morgans be allowed to pay such a fine in monthly installments." (emphasis added). Obviously, from its viewpoint, Respondent contests the reasonableness of the proposed penalty amount based upon its financial circumstances.

There are no statutory criteria for assessing and adjudicating civil money penalties for the knowing hire of unauthorized aliens. 8 U.S.C. §§ 1324a(e)(4), (5). OCAHO case law adopts the statutory criteria mandated for assessment and adjudication of penalties related to paperwork violations for allocating the appropriate penalty in the context of knowing hire violations. *United States v. Chacon*, 3 OCAHO 578, at 1774 (1993), *available in* 1993 WL 597395, at *7 (O.C.A.H.O.). However, these criteria are not binding in penalty assessments for knowing hire violations, which may be assessed without reference to them. *United States v. Ulysses, Inc.*, 3 OCAHO 449, at 550 (1992), *available in* 1992 WL 535586, at *5 (O.C.A.H.O.).

Count I, involving an alien not authorized to be employed in the United States, constitutes a serious violation. I deem it fair and just, however, to reduce the penalty to $575 because this is Respondent's first violation, Respondent is a small business whose claim of financial disability is not rebutted, and, as discussed more fully at III(B)(1) *infra*, there is no basis on which to find a lack of good faith on the part of Respondent. *See United States v. Karnival Fashion, Inc.*, 5 OCAHO 783, at 479 (1995), *available in* 1995 WL 626234, at *2 (O.C.A.H.O.) (identifying "lack of good faith" as "failure to cooperate" and as failure to comply with IRCA after employment verification responsibilities explained to Respondent at prior educational visit) (citations omitted).

B. Counts II - IV: Paperwork Violations

A penalty in the amount of $510 is assessed for Count II, failing to prepare a Form I-9 for Santa Garcia Hernandez. Count III, failing to properly complete section 2 of the Forms I-9 for three employees, maintains a $1,050 penalty assessment, $350 per individual. Finally, Count IV is a $350 penalty for failing to properly complete both sections 1 and 2 of the Form I-9 for Roger Morgan. Because liability is admitted for all Counts, only the reasonableness of the penalties remains at issue.

The statutory minimum civil money penalty in a paperwork violation case is "not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred." 8 U.S.C. § 1324a(e)(5); 8 C.F.R. § 274a.10(b)(2). Similar to substantive violations, I assess civil money penalties for paperwork violations within the range between the statutory minimum and the INS assessment. The statutory and regulatory factors which must be considered in determining the reasonableness of civil penalties assessed for paperwork violations are:

(1) size of the business;
(2) good faith of the employer;
(3) seriousness of the violation;
(4) whether or not the individual was an unauthorized alien; and
(5) history of previous violations.

8 U.S.C. § 1324a(e)(5); 8 C.F.R. § 274a.10(b)(2).

(1) Factors Evaluated

Size of Business

Complainant acknowledges that "Morgans is a small business." Brief at 8. Morgan's Answer explains that "Morgans is a small family owned neighborhood store specializing in Lebanese and Mexican foods." Morgan's maintained a staff of five employees, including the unauthorized alien and Roger Morgan as store manager/president. OCAHO case law holds that where a business is "small," the civil money penalty may be mitigated.[5] In effect, the parties are in agreement that Respondent is a small business. Although the factor of size mitigates the penalties in favor of Respondent, it does not appear that Complainant initially aggravated the penalties in this respect.

Good Faith of the Employer

Complaint asserts that Respondent lacks good faith because it knowingly hired and continued to employ an unauthorized alien and did not attempt to comply with the I-9 verification requirements until after receiving the Notice of Inspection. Respondent and its employees signed the Forms I-9 on August 8 and 9, 1997, between the date that Respondent received the Notice of Inspection and the deadline for Respondent to forward its Forms I-9 to INS. Respondent's actions demonstrate an attempt to comply with the requirements of IRCA upon notification by INS.

OCAHO case law makes clear that the mere fact of paperwork violations is insufficient to show a "lack of good faith" for penalty purposes. *See United States v. Minaco Fashions, Inc.*, 3 OCAHO 587, at 1907 (1993), *available in* 1993 WL 723360, at*5 (O.C.A.H.O.); *United States v. Valladares*, 2 OCAHO 316, at 144 (1991), *available in* 1991 WL 531739, at *4 (O.C.A.H.O.). The INS must prove that there is "some evidence of *culpable behavior beyond mere ignorance*

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[5] *United States v. Great Bend Packing Co.*, 6 OCAHO 835, at 134-35 (1996), *available in* 1996 WL 207188, at *4 (O.C.A.H.O.); *United States v. Riverboat Delta King, Inc.*, 5 OCAHO 738, at 128 (1995), *available in* 1995 WL 325252, at *2 (O.C.A.H.O.); *Giannini Landscaping, Inc.*, 3 OCAHO 573, at 1738-39 (1993), *available in* 1993 WL 566130, at *6 (O.C.A.H.O.); *United States v. Cuevas*, 1 OCAHO 273, at 1751 (1990), *available in* 1990 WL 512130. at *5 (O.C.A.H.O.).

on the part of the Respondent before this factor can serve to aggravate the penalty amount [for lack of 'good faith.']" *United States v. Honeybake Farms, Inc.*, 2 OCAHO 311, at 93 (1991), *available in* 1991 WL 531735, at *2 (O.C.A.H.O.) (emphasis added); *United States v. Karnival Fashion, Inc.*, 5 OCAHO 783, at 480 (1995), *available in* 1995 WL 626234, at *2 (O.C.A.H.O.) (emphasis added). Respondent admits liability for non-compliance due to "ignorance of the law," not out of "an intent to willfully infringe upon the law." Complainant fails to show a lack of good faith on the part of Respondent other than failure to provide a Form I-9 for the unauthorized employee and to properly complete four Forms I-9.

Complainant also erroneously relies on Respondent's admission of knowing hire of an unauthorized alien to demonstrate a lack of good faith. Respondent's admission is a separate factor to be considered under 8 U.S.C. § 1324a(e)(5). "The command of the statute is to consider both [the 'good faith' and 'whether or not the individual was an authorized alien'] factors, not to subsume one within the other." *United States v. Fox*, 5 OCAHO 756, at 280 (1995), 1995 WL 463979, at *4 (O.C.A.H.O.). Accordingly, Respondent is found not to have acted in bad faith. Because Complainant has not demonstrated culpable behavior beyond mere ignorance, the penalties assessed by INS must be mitigated in favor of Respondent.

Seriousness

OCAHO case law states that "a failure to complete any Forms I-9 whatsoever fundamentally undermines the effectiveness of the employer sanctions statute and should not be treated as anything less than serious." *Fox*, 5 OCAHO 756, at 280, *available in* 1995 WL 463979, at *4; *United States v. Davis Nursery, Inc.*, 4 OCAHO 694, at 943 (1994), *available in* 1994 WL 721954, at *14 (O.C.A.H.O.) (citation omitted). Respondent's failure to prepare a Form I-9 for Santa Garcia Hernandez in Count II is, therefore, a serious violation which permits aggravation of the penalty.

In contrast, the failure to complete Forms I-9 section 2 for three employees in Count III and the failure to complete Roger Morgan's Form I-9 sections 1 and 2 in Count IV are less serious violations than the substantial failure in Count II. "[T]he CAHO has never taken the position that every paperwork violation, no matter how minor or technical, is a serious violation. . . . While paperwork violations are always potentially serious, the facts of each case must be carefully considered to evaluate the degree of seriousness. Thus, the seriousness of the violations should be viewed as a continuum." *United States v. Skydive Academy of Hawaii Corp.*, 6 OCAHO 848, at 245-47 (1996), *available in* 1996 WL 312123, at *8 (O.C.A.H.O.) (citing *United States v. Felipe, Inc.*, 1 OCAHO 93, at 636-37 (1989), *aff'd by CAHO*, 1 OCAHO 108 (1989)). The penalties for Counts III and IV should not be aggravated to the same extent as the penalty for Count II. *United States v. Vickers*, 5 OCAHO 819, at 756 (1995), *available in* 1995 WL 813123, at *6 (O.C.A.H.O.); *Fox*, 5 OCAHO 756, at 280, 1995 WL 463979, at *4. Because Complainant states that "each and every violation is a serious violation in this case," Brief at 8, it is assumed that Complainant aggravated each Count's penalty on an equal basis for

"seriousness." Accordingly, the penalty assessments for Counts III and IV should be adjusted to reflect a lesser aggravation than the initial penalty assessed.

Whether or Not the Individual Was an Unauthorized Alien

It is undisputed that Santa Garcia Hernandez was an unauthorized alien. Nothing in the record or filings suggests that the employees in Counts III and IV were unauthorized aliens. Therefore, this factor serves to aggravate the penalties for Counts I and II, while mitigating the penalties for Counts III and IV. Complainant correctly addresses this factor in its Brief at 9.

History of Previous Violations

Complainant states, "Respondent has no history of previous violations," Brief at 8, a factor which mitigates in Respondent's favor. *See United States v. Giannini Landscaping, Inc.*, 3 OCAHO 573, at 1737 (1993), *available in* 1993 WL 566130, at *5 (O.C.A.H.O.). Presumably, Complainant mitigated this factor in its penalty assessment.

Other Factors

In addition to the five statutory factors, other relevant factors may be considered in determining the reasonableness of a penalty assessment,[6] including the ability of the employer to pay the proposed penalty.[7] Complainant has not taken issue with Respondent's claims that "[a]ny additional financial burden for Morgans at the present time would certainly place it's [sic] operation in jeopardy[,]" and due to its "financial circumstances," it is "operating under a very small margin of profit." Accordingly, Respondent's ability to pay the proposed penalty amount is in question, a factor which serves to mitigate the penalty assessments.

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[6] *United States v. American Terrazzzo Corp.*, 6 OCAHO 877, at 597 (1996), *available in* 1996 WL 914005, at *14 (O.C.A.H.O.); *United States v. Davis Nurseries, Inc.*, 4 OCAHO 694, at 938 (1994), *available in* 1994 WL 721954, at *10 (O.C.A.H.O.) ("Although the statute requires that I consider these five mitigating factors, I can consider others."); *United States v. M.T.S. Service Corp.*, 3 OCAHO 448, at 540 (1992), *available in* 1992 WL 535585, at *2 (O.C.A.H.O.) ("So long as the statutory factors are taken into due consideration, there is no reason that additional considerations cannot be weighed separately.").

[7] *American Terrazzzo Corp.*, 6 OCAHO 877, at 597, *available in* 1996 WL 914005, at *14; *Raygoza*, 5 OCAHO 729, at 52, *available in* 1995 WL 265080, at *3; *Minaco Fashions, Inc.*, 3 OCAHO 587, at 1909, *available in* 1993 WL 723360, at *7; *Giannini Landscaping Inc.*, 3 OCAHO 573, at 1740, *available in* 1993 WL 566130, at *7.

(2) Effect of Factors Weighed Together

To date, INS penalty assessments are examined by ALJs under either a mathematical approach or a judgmental approach.[8] I evaluate INS civil penalty assessments and weigh each of the factors using a judgmental approach and not a formula approach.[9] "The result is that each factor's significance is based on the facts of a specific case, consistent with the guidance of IRCA jurisprudence as precedent." *United States v. Great Bend Packing Co.*, 6 OCAHO 835, at 134 (1996), 1996 WL 207188, at *4 (O.C.A.H.O.).

In determining the appropriate level of civil money penalty, I have considered the range of options between statutory minimum and the amounts assessed by the INS. While Respondent's size, good faith, lack of previous violations, and ability to pay the fine do not support a finding for the penalties initially assessed by INS, the aggravating factors of seriousness and hiring an unauthorized alien do not support adjudication of the statutory minimum. Accordingly, penalties assessed by INS are nominally reduced to reflect additional mitigation as follows:

(a) Count II is reduced to $360, reflecting mitigation for Respondent's good faith and financial situation;

(b) Count III is reduced to $200 per individual for a total of $600, reflecting mitigation for Respondent's good faith, a lesser degree of seriousness than Count II, and financial situation; and

(c) Count IV is reduced to $200, reflecting mitigation for Respondent's good faith, a lesser degree of seriousness than Count II, and financial situation.

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[8] *See United States v. Felipe, Inc.*, 1 OCAHO 108, at 731, 732 (1989), *available in* 1989 WL 433964, at *5 (O.C.A.H.O.) (Affirmation by the Chief Administrative Hearing Officer, concurring in the calculations by the ALJ who implemented a mathematical formula to assess civil money penalties, but concluding that the ALJ's formula "does not preclude another separate and distinct formula or system from being considered acceptable."); *United States v. J.J.L.C., Inc.*, 1 OCAHO 154, at 1097 (1990), *available in* 1990 WL 512156, at *7 (O.C.A.H.O.) (discussing ALJ's application of statutory criteria on a "judgmental basis" to assess civil penalty, rather than by applying a mathematical formula).

[9] *See e.g. United States v. Great Bend Packing Co.*, 6 OCAHO 835, at 134 (1996), *available in* 1996 WL 207188, at *4 (O.C.A.H.O.); *United States v. Williams Produce, Inc.*, 5 OCAHO 730, at 59 (1995), *available in* 1995 WL 265081, at *4 (O.C.A.H.O.); *United States v. Reyes*, 4 OCAHO 592, at 6-7 (1994), *available in* 1994 WL 269183, at *5 (O.C.A.H.O.); *United States v. Giannini Landscaping, Inc.*, 3 OCAHO 573, at 1736-37 (1993), *available in* 1993 WL 566130, at *5 (O.C.A.H.O.).

IV. ULTIMATE FINDINGS, CONCLUSIONS AND ORDER

I have considered the pleadings, briefs, motions, and accompanying documentary materials submitted by the parties. All motions and other requests not previously disposed of are denied.

Accordingly, as previously found and more fully explained above, I determine and conclude upon a preponderance of the evidence:

1. That Respondent violated 8 U.S.C. § 1324a(a)(1)(A), 8 U.S.C. § 1324a(a)(2), and 8 U.S.C. § 1324a(a)(1)(B) by failing as alleged in the Complaint to comply with the requirements of 8 U.S.C. §§ 1324a(b)(1) and (2) with respect to the individuals named in Counts I, II, III, and IV of the Complaint.

2. That upon consideration of the statutory criteria and other relevant factors used for determining the amount of penalty for violations of 8 U.S.C. § 1324a(a)(1)(A), 8 U.S.C. § 1324a(a)(2), and 8 U.S.C. § 1324a(a)(1)(B), it is just and reasonable to require Respondent to pay civil money penalties in the following amounts:

Count I:	$575.00 as to the named individual
Count II:	$360.00 as to the named individual
Count III:	$200.00 as to each of the three named individuals for a total of $600.00
Count IV:	$200.00 as to the named individual

For a total of **$1,735.00.**

3. That Respondent shall cease and desist from violating 8 U.S.C. § 1324a.

This Final Decision and Order Granting Complainant's Motion for Summary Decision is the final action of the judge in accordance with 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. § 68.52(c)(vi). As provided at 28 C.F.R. § 68.53(a)(2), this action shall become the final order of the Attorney General unless, within thirty days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and

judicial review are available to parties adversely affected. *See* 8 U.S.C. §§ 1324a(e)(7), (8) and 28 C.F.R. § 68.53.

SO ORDERED.

Dated and entered this 11th day of September, 1998.

Marvin H. Morse
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Final Decision and Order Granting Complainant's Motion for Summary Decision, were mailed first class, this 11th day of September, 1998.

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